

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12859 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No

M S BIHARI

Versus

STATE OF GUJARAT

Appearance:

MR NK MAJMUDAR for Petitioner No. 1

MR IM PANDYA AGP for Respondent No. 1-3

NOTICE SERVED BY DS for Respondent No. 4-5

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 03/08/2001

ORAL JUDGEMENT

1. RULE. The learned Assistant Government Pleader

Mr.I.M.Pandya waives service of Rule.

2. The petitioner, employed under the respondents, was suspended by the order dated 1.8.2000 from his service as a temporary tracer on account of his arrest and remaining in custody for more than 48 hours. The Executive Engineer, Himatnagar, while passing the order of suspension, also fixed the headquarter at Mehsana. However, upon representation of the petitioner, the headquarter was changed to Palanpur by the same officer by the order dated 9.10.2000 even as the suspension continued. Thereafter, the headquarter of the petitioner was again sought to be changed to Mehsana by the order dated 1.11.2000 on the ground that the superior officer, i.e. Superintending Engineer, had not approved the order changing the headquarter from Mehsana to Palanpur.

3. The learned counsel for the petitioner argued that the impugned order changing the headquarter of the petitioner was mala fide and arbitrary and that the respondents had no power under the Rules to suspend and transfer an employee at the same time. As against that, the learned Assistant Government Pleader submitted with the support of an affidavit of the Executive Engineer that the impugned order was passed in bona fide exercise of power and the Superintending Engineer being the appointing authority and that authority having not approved the change of headquarter, the legal and necessary order requiring the change of headquarter was passed by the Executive Engineer.

4. A judgment of the Division Bench of this Court in J.S.SOLANKI v. PRINCIPAL CHIEF CONSERVATOR OF FORESTS [1986 (1) G.L.R. 41] was relied upon on behalf of the petitioner wherein it is clearly held, against the petitioners, that an order of suspension as well as transfer could be passed by the appropriate authority. However, it is also observed that it would be advisable to record reasons on the file, bringing out clearly why, in addition to suspension, change of headquarter was necessary. If reasons were stated, the Court would be able to better appreciate the executive action and would be loath to interfere with it. After observing that the Courts should be slow in interfering with such administrative orders which are of a discretionary nature, it is also held that the order of suspension-cum-transfer should be very sparingly passed in only those rare cases where transfer or suspension alone is not sufficient to achieve the objective of containing the delinquent's sphere of influence. With these observations, in the facts of that case, the

Government was directed to review the cases of the delinquents and the hope was expressed that the Government would maintain the status quo.

5. In the facts of the present case, it is not clear from the affidavit-in-reply whether the Superintending Engineer has recorded any reasons for reversing the order of changing headquarter and it is also not stated whether, at the time of passing of the first order of suspension-cum-transfer, reasons were recorded. It would, therefore, be proper, following the ratio of the aforesaid judgment, to direct the Government to review its decision of not approving the change of headquarter as contained in the order dated 9.10.2000 of the Executive Engineer. The learned Assistant Government Pleader fairly conceded that the Government shall review its decision within a period of 15 days and communicate its decision to the petitioner. With this order, making the Rule absolute to the aforesaid extent, the petition stands disposed. It is hoped that the Government will not disturb the status quo in the meantime.

Sd/-

03.8.2001 (D.H.Waghela, J.)
(KMG Thilake)